

THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.12937 of 2001

10.8.2005

Between:

Shaikh Akhatar, S/o.Shaikh Mahboob, Private employee,
Edi Bazar, Hyderabad.

... Petitioner

AND

1. The Commissioner of Police, City Hyderabad

and two others

... Respondents

ORDER:

The petitioner gave a complaint on 02.4.2001 to the third respondent against Mohammed Qurram alleging that the said person trespassed into petitioner's house and beat him and his sister besides taking away costly articles. In this writ petition, he alleges that the third respondent did not register the said complaint as a cognizable offence. Since there was no action on the part of the third respondent, the petitioner seeks a direction to respondents to register the complaint and proceed in accordance with law.

If a cognizable offence is reported to Station House Officer (SHO), it has to be registered as a crime and investigation has to be taken up immediately, if possible by arresting the accused [Section 154(1) of CrPC]. As has been held by various courts, it is always permissible for the police to look into the preliminary aspects as to whether a cognizable offence is made out, as to whether the complaint is regarding civil dispute pending in a civil court or whether the complaint is a dispute purely of civil nature etc. If for any reason or without reason the SHO fails to register a cognizable offence, complainant may have to approach, initially, the Superintendent of Police of the District or the Deputy Commissioner of Police where there is a commissionerate of police by giving a representation. Such representation has to be looked into by the Superintendent of Police or Deputy Commissioner of Police, as the case may be, who shall take up investigation, if necessary, or order investigation by subordinate Police official.

If the Superintendent of Police also rejects the representation, the

complainant is not without any remedy. He can always move the Judicial Magistrate competent to take cognizance under Section 200 Cr.P.C., by filing a private complaint. In such a case, after recording the statement of the complainant, the learned Judicial Magistrate of First Class may direct the police to take up investigation under sub-section (3) of Section 156 Cr.P.C. A writ petition is not a proper remedy. It is well settled by reason of two Division Bench judgments of this Court in **Mohd. Faizuddin v. G.Ramakrishna Reddy** and **A.Omkar v. Commissioner of Police**.

In **A.Omkar v. Commissioner of Police** (supra), reiterating the view taken in **Mohd. Faizuddin v. G.Ramakrishna Reddy** (supra), the Division Bench laid down that:

A person who is subjected to any offence particularly cheating and criminal breach of trust, is entitled to inform the police and the law enjoins the officer-in-charge of the concerned police station to register the case for investigation. In case the Officer-in-charge of the police station does not act as contemplated under Section 154(1) of the Code of Criminal Procedure, 1973, the informant/complainant has the option to send the substance of such information in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, is required either to investigate the case himself or direct an investigation to be made by any police officer subordinate to him. Except in cases which are non-cognizable, the officer-in-charge of the police station has no option and he is required to report of the progress in the investigation and finally to submit the report as contemplated under Section 173 (2) of the Code.

Though the learned Counsel for the petitioner submits that the petitioner has given a complaint to the first respondent, a copy of the same is not placed before this Court nor any averment is made to that effect in the affidavit accompanying the writ petition. Therefore, no relief can be granted to the petitioner. If so advised, the petitioner may approach the concerned Deputy Commissioner of Police and give a complaint.

With the above observations and directions, the writ petition is disposed of.

(V.V.S. RAO,J)

August 10, 2005

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